

REMARKS

Applicant respectfully requests entry of the following amendments and remarks contained herein in response to the Office Action mailed October 1, 2007. Applicant respectfully submits that the amendments and remarks contained herein place the instant application in condition for allowance.

Upon entry of the amendments in this response, claims 1 – 22 are pending. In particular, Applicant amends claims 2 – 4. Reconsideration and allowance of the application and presently pending claims are respectfully requested.

I. Examiner Interview

Applicant first wishes to express sincere appreciation for the time that Examiner Hussain spent with Applicant's Attorney, Anthony Bonner, during a telephone discussion on November 27, 2007 regarding the outstanding Office Action. During that conversation, Examiner Hussain and Mr. Bonner discussed potential arguments and amendments with regard to claim 1, in view of *Daniell*. The general thrust of the potential principal arguments included a discussion that *Daniell* was commonly owned at the time the invention was made and should be excluded because of 35 U.S.C. §103(c). Thus, Applicant respectfully requests that Examiner Hussain carefully consider this response and the amendments.

II. Rejections Under 35 U.S.C. §112

The Office Action indicates that claim 1 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection. More specifically, claim 1 does not include an element of sending the IM message to the second recipient. As such, there should be no confusion as to whether the first recipient forwards the IM message to the second recipient or whether the sender sends the IM message to the second

recipient because the claim includes no such element. For at least this reason, Applicant respectfully submits that claim 1 meets all the requirements of 35 U.S.C. §112.

III. **Claims 1 – 22 Are allowable under 35 U.S.C. §103(c)**

Clear and Conspicuous Statement of Ownership Pursuant to MPEP §706.02(I)(2)II

The Office Action rejects claims 1 – 22 in view of a plurality of references, which include U.S. Application Number 2006/0248157 ("*Daniell 157*"). Applicant respectfully submits that these rejections are improper for at least the reason that the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. More specifically, 35 U.S.C. §103(c) states:

(1) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, ***shall not preclude patentability under this section*** where the subject matter and the claimed invention were, at the time the claimed invention was made, ***owned by the same person or subject to an obligation of assignment to the same person.***
(Emphasis added)

Since *Daniell 157* and the present application were owned by the same person or subject to an obligation of assignment to the same person, it would be improper to use *Daniell 157* under 35 U.S.C. §103 to preclude patentability of the present application. Secondly, since the filing date of *Daniel 157* is June 28, 2006, which is after the October 14, 2003, filing date of the present application, it has not been shown how *Daniell 157* is a prior art reference at all. In addition, even if U.S. App. No. 10/364,693, filed February 10, 2003 (*Daniell 693*), to which *Daniell 157* claims priority, is shown to qualify as a possible reference, Applicant further submits that *Daniell 693* and the present application were also owned by the same person or subject to an obligation of assignment to the same person, thereby also excluding it from use under 35 U.S.C. §103. For at least this reason, Applicant contends that claims 1 – 22 are allowable.

CONCLUSION

In light of the foregoing amendments and for at least the reasons set forth above, Applicant respectfully submits that all objections and/or rejections have been traversed, rendered moot, and/or accommodated, and that the now pending claims are in condition for allowance. Favorable reconsideration and allowance of the present application and all pending claims are hereby courteously requested.

Any other statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and Official Notice, or statements interpreted similarly, should not be considered well-known for the particular and specific reasons that the claimed combinations are too complex to support such conclusions and because the Office Action does not include specific findings predicated on sound technical and scientific reasoning to support such conclusions.

If, in the opinion of the Examiner, a telephonic conference would expedite the examination of this matter, the Examiner is invited to call the undersigned attorney at (770) 933-9500.

Respectfully submitted,

/afb/

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